

I. Taxes

Concerning taxes on past and future lost income, Respondent disagreed with Petitioner's method of calculation. No such disagreement was raised on the face of Respondent's briefs, reports, or expert testimony.

In fine, Respondent's expert argues that, in determining the proper amount to deduct from Petitioner's earnings, one should actually prepare tax returns as such "incorporate important provisions from the tax code." Respondent's Exhibit ("R. Ex.") Y at 2.

Yet, Respondent's initial expert report indicated only that compensation should be reduced by "appropriate United States Federal income taxes and Medicare taxes totaling between 18 and 21 percent of income" and assuming a "maintained itemized deductions of 14% per year as indicated in Petitioner's report." R. Ex. S at 7.

As the Damages Ruling indicates, the calculation of damages in these cases is at best a rough estimate of what will make the injured party whole. On the one hand, Respondent is correct that the preparation of tax returns would incorporate essential elements of the tax code. Yet such elements are necessarily drawn from today's code when, what is being discussed in this case, is a projection or best guess both for the past and the future. Therefore, it seems most appropriate to utilize an estimated tax rate as is suggested in Respondent's initial expert report and as is actually utilized by Petitioner in calculating damages.

II. Offset Earnings Adjustment

Respondent argues that the offset income figure utilized by the Court, \$107,016, incorporates figures from 2005 and ought to have been adjusted to 2006 dollars per the 4% wage growth thereby equaling \$111,297. The Court agrees.

III. Future Medical Expenses

Similarly, the Court agrees with Petitioner that the figures used to calculate future medical expenses must be adjusted to 2006 numbers. That very scenario was anticipated by the Court in the initial Damages Ruling.

On that topic, as per Dr. Kennedy's notation, R. Ex. Z., the net discount rate for Massage Therapy is actually 1.5% and not 2.5% as is erroneously noted on page 8 of the Damages Ruling.

IV. Past Medical Expenses

Petitioner has raised the point, and this Court agrees, that any out of pocket expenses ought to be tallied through the date of judgment which, at this time, is still anticipated to issue on or around

8 February 2006. Therefore, the \$48,634 figure for past unreimbursable medical expenses should be recalculated accordingly.

V. Work life expectancy

Petitioner has raised a question as to the calculation of Petitioner's work like expectancy. In particular, Petitioner posits that a 33 year work life expectancy as accepted by the Court would take Petitioner into mid 2031 and not 18 January 2031 as indicated by the Court. However, the Court utilized the exact date proffered by Respondent, which actually *exceeds* Petitioner's own calculations by 2.5 years. R. Ex. S at 9. The Court accepted the calculation more beneficial to the injured Petitioner.

VI. Lost Earnings

Petitioner takes issue with the Court's calculation (at page 10 of the Damages Ruling) of what Petitioner initially would have earned but for the injury. In retrospect, the assumptions behind this calculation could have been made clearer. The ruling should have indicated that as per Respondent's argument, since the 20% salary increase would have started in July 1998 but for the vaccine related injury, Petitioner's salary for that year was prorated 20% from July. In addition, a \$5,000 bonus, which this Court found Petitioner would have received more likely than not, was then added bringing the tally to \$146,600. As mentioned in the Damages Ruling, this figure necessarily is more in keeping with Respondent's calculation which took into account a prorated approach, rather than Petitioner's posture which would have taken his actual salary for the year, added the \$5,000 bonus, and increased that sum by 20 percent. The former is more reasonable than the latter.

VII. Conclusion

Utilizing this supplemental ruling in combination with the 21 September 2005 Damages Ruling, Petitioner shall supply the Court with a final damages calculation *post haste*. That calculation will then be appended to a Final Decision in this case. If there are patent errors in the calculation, Respondent may raise such on a motion for reconsideration.

IT IS SO ORDERED.

Richard B. Abell
Special Master